


M E M O R A N D U M

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:** Bill 38-12, Capital Improvements Program – Child Care Assessment

Health and Human Services Committee/Education Committee recommendation:
enact with amendments (Councilmember Rice dissenting).

Bill 38-12, Capital Improvements Program – Child Care Assessment, sponsored by Councilmembers Riemer, Floreen, and Andrews, Council President Navarro, Councilmember Ervin, Council Vice-President Rice, and Councilmember Berliner, was introduced on December 4, 2012. At the public hearing, held on January 22, no speakers appeared. A joint Health and Human Services Committee/Education Committee worksession was held on January 31.

Bill 38-12 would require the Office of Management and Budget to submit child care facilities impact statements with certain capital projects in the Capital Improvements Program (CIP) and authorize the Council to require other County departments and agencies to supplement the impact statements furnished by the Office of Management and Budget. The impact statement must analyze the feasibility of including a child care facility in the project.

Purpose The demand for good child care facilities exceeds supply in the County. The potential for including child care facilities in each County Capital Improvements Program projects is not routinely assessed. The purpose of the Bill is to assure that the County takes advantage of all opportunities to include child care facilities in County capital projects.

The County Department of Health and Human Services performs a similar evaluation when it considers whether to recommend child care facilities in schools undergoing major renovation or construction as a part of the Child Care in Schools CIP project. This CIP project encourages child care providers to offer high quality child care in communities where they might not otherwise be financially able, due to high numbers of subsidy and low-income parents. Factors the Department reviews include (1) poverty rates (as measured by students eligible for Free and Reduced-Price Meals Service); (2) mobility rates; (3) English for Speakers of Other Language rates; and (4) the availability of quality (credentialed or accredited) child care in the community. The analysis required by this Bill could use these or similar criteria, along with other information that substantiates the need for child care space and services.

Committee Amendments

1) Local need and impact Councilmember Riemer, lead sponsor, noted at introduction that the Bill should expressly require an assessment of the local area need for child care in the area of each capital project. The County Commission on Child Care suggested similar amendments (see Commission letter, ©9). To do this, the Committees recommended the amendment on ©2, line 12. The Committees also recommended in principle an amendment by Councilmember Navarro that would direct the Executive branch to assign highest priority to the provision of child care in areas with large numbers of low-income parents. That amendment, drafted after the Committee worksession, is on ©2, lines 15-19.

2) Timing The Committees recommended inserting after Program, on ©2, line 4: during facility planning. This will more clearly direct OMB when this analysis fits in the CIP development process. Similarly, the Committees recommended inserting proposed before building on ©2, line 21.

3) Exemptions The County Attorney (see memo, ©10-11) raised questions about the provision on lines 27-30, which as originally drafted would let the Council by resolution exempt from the assessment requirement “a category of capital projects which by their nature do not require child care analysis”. The County Attorney concluded that any exemption must be done by legislation, rather than Council resolution not signed by the Executive, despite a similar provision in County Code §31-68(d) (enacted in Bill 8-07, bicycle and pedestrian impact analysis) having been passed without Executive branch objection. While Council staff did not completely accept the County Attorney’s legal analysis, we suggested that this issue be easily resolved by adopting a version of the amendment the County Attorney proposed, which would let the Executive exempt classes of projects by a Method 1 regulation that would be subject to Council approval and also let the Council do so in the capital budget resolution, which goes to the Executive for approval. The Committees recommended the amendment on lines 27-30.

Councilmember Riemer amendments

Councilmember Riemer recommends 2 further amendments to clarify the Bill’s intent:

- insert and demand for after of on line 12;
- insert capital project or after a on line 29.

This packet contains:

| | <u>Circle #</u> |
|--------------------------------------|-----------------|
| Bill 38-12 with Committee amendments | 1 |
| Legislative Request Report | 3 |
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Bill No. 38-12
Concerning: Capital Improvements
Program –Child Care Assessment
Revised: 2-19-13 Draft No. 2
Introduced: December 4, 2012
Expires: June 4, 2014
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Riemer, Floreen, and Andrews, Council President Navarro, Councilmember Ervin, Council Vice-President Rice, and Councilmember Berliner

AN ACT to:

- (1) require the Office of Management and Budget to submit child care facilities impact statements with certain capital projects in the Capital Improvements Program;
- (2) authorize the Council to require other County departments and agencies to supplement the impact statements furnished by the Office of Management and Budget; and
- (3) generally amend County law regarding the analysis of capital projects.

By adding

Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Section 27-62A, Child care facilities impact statements

| | |
|-------------------------------------|--|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 27-62A is added as follows:**

2 **27-62A. Child care facilities impact statements.**

3 (a) For each applicable capital project in the Capital Improvements
 4 Program during facility planning, the Office of Management and
 5 Budget must include in or transmit with the CIP an analysis of:

- 6 (1) the feasibility of including child care facilities in the project; and
 7 (2) what capital or operating budget modifications, if any, would be
 8 needed to include child care facilities in the project.

9 (b) The child care analysis submitted by OMB should discuss at least the
 10 following issues related to the capital project:

- 11 (1) compatibility of child care with the underlying project;
 12 (2) local availability of child care in the area of the project; and
 13 [[(2)]] (3) conformity of child care facilities to applicable zoning and
 14 land use plans.

15 (c) Each child care analysis under this Section should assign highest
 16 priority to the provision of high quality child care in areas where the
 17 provision of child care may not otherwise be financially feasible due to
 18 large numbers of low-income parents and the resulting need for
 19 significant subsidies.

20 [[(c)]] (d) As used in this section, applicable capital project means any
 21 proposed building project administered by the Department of General
 22 Services or the Parking Management Division of the Department of
 23 Transportation.

24 [[(d)]] (e) In performing its analysis, OMB should consult the Department of
 25 Health and Human Services, the Planning Board, and any other County
 26 department or agency with expertise in child care.

27 ~~[[e]]~~ (f) The Council may ~~[[by]]~~ in the capital budget resolution, and the
 28 County Executive may by Method 1 regulation, exempt from this
 29 Section a category of capital projects which by their nature do not
 30 require child care analysis.

31 *Approved:*

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| Nancy Navarro, President, County Council | Date |
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33 *Approved:*

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| Isiah Leggett, County Executive | Date |
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35 *This is a correct copy of Council action.*

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| Linda M. Lauer, Clerk of the Council | Date |
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LEGISLATIVE REQUEST REPORT

Bill 38-12

Capital Improvements Program – Child Care Assessment

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|---|---|
| DESCRIPTION: | Requires the Office of Management and Budget to submit a child care facilities impact statement with certain capital projects proposed in the County Capital Improvements Program. The impact statement must analyze the feasibility of including a child care facility in the project. |
| PROBLEM: | The demand for good child care facilities exceeds supply in the County. The potential for including child care facilities in each County Capital Improvements Program projects is not routinely assessed. |
| GOALS AND OBJECTIVES: | To include more child care facilities in County CIP projects where feasible. |
| COORDINATION: | Office of Management and Budget, Department of Housing and Community Affairs, Department of Transportation, Planning Board, and the Department of Health and Human Services. |
| FISCAL IMPACT: | To be requested. |
| ECONOMIC IMPACT: | To be requested. |
| EVALUATION: | To be requested. |
| EXPERIENCE ELSEWHERE: | To be researched. |
| SOURCE OF INFORMATION: | Michael Faden, Senior Legislative Attorney, 240-777-7905 |
| APPLICATION WITHIN MUNICIPALITIES: | Applies only to County Capital Improvements Program. |
| PENALTIES: | Not applicable |

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| | Planning PDF). | additional \$50,000 in the Facility Planning PDF for each of the six years. (currently \$260,000; would increase to \$310,000 per year) |
| HHS staff review and assessment of public facilities for child care | <p>Initial Review Phase:</p> <ul style="list-style-type: none"> • Obtain and review information from DGS/DOT regarding the proposed project to assess the feasibility and desirability of a child care facility on the project site. • Neighborhood and site visit for overall feasibility. • Obtain and evaluate neighborhood demographic information to determine if the location is an area of need for child care facilities. • Internal HHS discussions and drafting recommendations. | \$1,587 per project (\$39.67 per hour @ 40 hours per project) – Cost assumptions are based on a Program Manager I position, Grade 23 @\$82,511. |
| OMB staff review the assessment conducted by DGS and HHS | <p>This requires :</p> <ul style="list-style-type: none"> • Development of a review process • Coordination of participating departments or agencies • Review and analysis of assessments and assumptions • Program of requirements (POR) development and review to include the child care facility components. • Analysis of the complex financing components that fund child care facility. | 1 FT Management and Budget Specialist (\$126,930 = 1FTE; including estimate for retirement, FICA/Medicare, life insurance, and health insurance); \$1,768 hours per year, \$126,930 @85% = \$107,891. |
| DOT, Parking Management Division | The re-development of Parking Lot District property does not typically follow the process explained in paragraph 2 above. Typically a property is identified as appropriate for re-development and an RFP is advertised to obtain private development proposals. The RFP could contain the requirement to construction child care facilities within the private development but I do not believe the developer can guarantee that any entity will want to lease the space and operate such a facility. This legislation does not make it clear if the County would then guarantee themselves as the facility operator or what compensation would be paid to the private developer. If the development included a County owned parking garage, the construction and operation of a child care facility within the garage could not be paid with Parking Lot District funds. | No specific MCDOT funding required. MCDOT will include coordination with HHS in the preparation of any property development RFP. MCDOT would expect HHS to program any General Fund funding of any child care facility to be constructed. MCDOT would further expect HHS to justify the decision to include or not include a child care facility in any CIP that may result from the execution of a General Development Agreement with a developer. |

Sources: Department of General Services, Department of Health and Human Services, and Office of Management and Budget

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Not applicable. There is not enough specific information to provide real cost estimates.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

This Bill does not authorize future spending.

6. An estimate of the staff time needed to implement the bill.

- DGS staff time: 32 hours per project; 1.2% of 1 FTE
- HHS activities and staff time for a typical project: 40 hours; .10 of 1 FTE
- OMB staff time: 1,768 hours; 85% of 1 FTE (to encompass all likely candidate CIP projects)
- DOT staff time: No additional staff required.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

Per project staff time estimated in #6 above needs to be multiplied by the number of projects annually submitted for funding to determine the full extent of staff time required. If additional staffing is not provided for this function, other work will need to be reprioritized.

8. An estimate of costs when an additional appropriation is needed.

See items #2 and 3 above.

9. A description of any variable that could affect revenue and cost estimates.

The costs for providing the requested analysis will vary based on the number of projects considered along with the level of complexity in each project. Some data are easier to obtain while others may require longer time and cost more.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

11. If a bill is likely to have no fiscal impact, why that is the case.

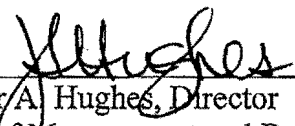
Not applicable.

12. Other fiscal impacts or comments.

Not applicable.

13. The following contributed to and concurred with this analysis:

Barbara Andrews, Early Childhood Services, HHS
Patricia Brennan, Legislative Officer, HHS
Lisa Stafford, Budget Team, HHS
Greg Ossont, Deputy Director, Planning and Development, DGS
Angela Dizelos, Central Services Division, DGS
Rick Siebert, Parking Management Division, DOT
Al Roshdieh, Parking Management Division, DOT
Mary Beck, Office of Management and Budget
Pofen Salem, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

1/18/13
Date

Economic Impact Statement

Council Bill 38-12, Housing – Capital Improvements Program – Child Care Assessment

Background:

Council Bill 38-12 requires the Office of Management and Budget to child care facilities impact statements for projects administered by the Department of General Services or the Parking Management Division of the Department of Transportation. The purpose of the bill is to advise the County Council about which projects should include child care facilities.

1. The sources of information, assumptions, and methodologies used.

Not applicable. The subject legislation requires that the Executive branch advise the Council on the suitability of including child care facilities in certain County projects.

2. A description of any variable that could affect economic impact statements.

See #3 below.

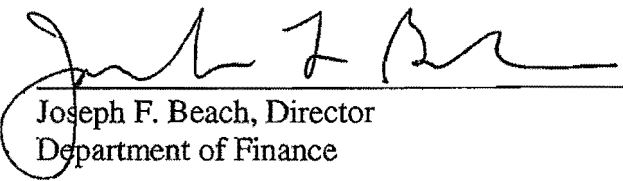
3. The bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property value in the County.

Not applicable. The subject legislation does not have an economic impact because it only requires that the Executive branch advise the Council on the suitability of including child care facilities in certain County projects.

4. If a bill is likely to have no economic impact, why is that the case?

See #3 above.

5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance.



Joseph F. Beach, Director
Department of Finance

12/12/12
Date



COMMISSION ON CHILD CARE

January 24, 2013

The Honorable Nancy Navarro
President, Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Council President Navarro,

The Commission on Child Care is writing concerning County Council Bill 38-12 – Capital Improvement Program – Child Care Assessment. The Commission thanks the County Council for its continued efforts to improve child care in this County.

The Commission reviewed the proposed legislation and suggests the following additions to Sec. 1. Section 27-62A (b):

- (3) demand for child care in proximity to the underlying project
- (4) impact to the existing child care programs in proximity to the underlying project

The purpose of these additions is to ensure that the community need for child care and the impact to existing child care programs in the area of a proposed new development are considered in the decision to add additional child care in public space. We are happy to provide additional input into the Child Care Assessment process as this bill moves forward and is put into practice.

Thank you, again, for your work to provide quality, accessible and affordable child care to Montgomery County families.

Sincerely,

Mindy Thiel, Ph.D., LCSW-C

Mindy Thiel, Ph.D., LCSW-C
Chair

cc: Members, Montgomery County Council
The Honorable Isiah Leggett, Montgomery County Executive
Uma Ahluwalia, Director, Montgomery County Department of Health and Human Services (HHS)
Kate Garvey, Chief, Children, Youth and Family Services, HHS



Department of Health and Human Services



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

December 28, 2012

TO: Mary Beck
Office of Management and Budget

VIA: Marc P. Hansen *Marc P. Hansen*
County Attorney

FROM: Karen L. Federman Henry *Karen L. Federman Henry*
Chief, Division of Finance and Procurement

RE: Bill 38-12, Capital Improvements Program – Child Care

The County Executive's Office has requested our comments on Bill 38-12. This memorandum identifies the legal concerns that we see in the Bill.

Background

Bill 38-12 proposes to amend Chapter 27 ("Human Rights and Civil Liberties") by adding § 27-62A. The new section requires the Office of Management and Budget to transmit with the CIP an analysis of the feasibility of including child care facilities in applicable capital projects, along with what capital or operating budget modifications would be needed to include child care facilities in the project. An "applicable capital project" means "any building project administered by the Department of General Services or the Parking Management Division of the Department of Transportation." The Bill would authorize the County Council to exempt a category of capital projects from the provision by resolution when the analysis is not necessary.

Discussion

The substantive legal concern derives from Article XI-A of the Maryland Constitution, which "authorizes counties to adopt home rule charters which . . . function as 'constitutions' for the counties adopting them." *Montgomery County, Maryland v. Anchor Inn Seafood Restaurant*, 374 Md. 327, 331 (2003). As described by the Court of Appeals, a charter "is the organic, the

Mary Beck, OMB
December 28, 2012
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fundamental law, establishing basic principles governing relationships between the government and the people, and among the various governmental branches and bodies." *Cheeks v. Cedlair*, 287 Md. 595, 607 (1980). The Charter is the local equivalent of a constitution.

The County Charter vests legislative power in the County Council (§ 101), and it vests executive power in the County Executive (§ 201). Legislative enactments are subject to § 208 of the Charter, which provides that any legislative enactment of the Council must be "delivered" to the County Executive "who . . . shall approve or disapprove it." A legislative enactment makes law or prescribes policy. See *Scull v. Montgomery Citizens League*, 249 Md. 271, 282 (1968); *McQuillin, Municipal Corporations*, § 10:6. A resolution differs from a legislative enactment, because it "denotes something less solemn or formal . . . [and] generally speaking, is simply an expression of opinion or mind concerning some particular item of business coming within the legislative body's official cognizance" *Inlet Associates v. Assateague House Condominium Association*, 313 Md. 413, 428 (1988).

The Bill permits the Council, by resolution, to exempt certain undefined projects from the Bill's requirements. Determining the scope of a law is a legislative act. Under the Charter, a legislative act must be effected through the enactment of legislation under § 208 of the Charter. The Bill circumvents the legislative process by effectively allowing the Council to amend the law by resolution. The Bill thus violates § 208 of the Charter. This legal infirmity may be remedied, however, by amending the Bill to authorize the Executive to exempt classes of projects that are not suitable for a child care facility from the ambit of the Bill by a Method (1) or (2) regulation.

Please contact us if you would like to discuss our comments.

cc: Kathleen Boucher, Assistant Chief Administrative Officer
Michael Faden, Senior Legislative Attorney